

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

USA,

Plaintiff,

v.

HOLMES,

Defendant.

Case No. [10-cr-00108-SI-1](#)

**ORDER FOR SUPPLEMENTAL
BRIEFING**

Re: Dkt. No. 32

This matter comes before the Court on the Government's motion to stay consideration of defendant Stephen Richard Holmes's application for an order under 28 U.S.C. § 2255 to vacate, set aside, or correct his sentence. Dkt. No. 32. The Government seeks a stay pending the Supreme Court's resolution of *Beckles v. United States*, for which a petition for a writ of certiorari was granted on June 27, 2016. *Beckles v. United States*, No. 15-8544, 2016 WL 1029080 (June 27, 2016).

There appears to be disagreement between the parties on the potential post-*Johnson* Guidelines range sentence applicable to Holmes. See Dkt. No. 33 at 5 (Holmes Reply Br.). The government asserts that a post-*Johnson* guideline range would be 121-151 months, while defendant asserts that it would be 46-57 months. Defendant has been in custody since December, 2009.

A court has the discretion "to enter a stay of an action before it, pending resolution of independent proceedings which bear upon the case." *Leyva v. Certified Grocers of Cal.*, 593 F.2d 857, 863 (9th Cir. 1979). In determining whether to grant a stay, this Court must consider whether "there is even a fair possibility that the stay . . . will work damage to some one else." *Landis v. N. Am. Co.*, 299 U.S. 248, 255 (1936). If there is, then a stay would be inappropriate unless the moving party "make[s] out a clear case of hardship or inequity in being required to go forward."

1 *Id.*

2 In order to make the prejudice determination, the Court must consider Holmes's post-
3 *Johnson* Guidelines range in the present matter. Accordingly, IT IS HEREBY ORDERED that
4 the parties shall meet and confer on this issue and, if they can reach agreement, file a joint
5 statement **on or before August 26, 2016**. If the parties disagree on what the revised calculation
6 would be, then they shall file separate statements by the same date.

7
8 **IT IS SO ORDERED.**

9 Dated: August 12, 2016



10
11 SUSAN ILLSTON
United States District Judge